

**Department of Agriculture  
Notice of Hearing on Proposed  
Administrative Regulations**

A public hearing will be conducted at 10:00 a.m. Thursday, June 10, 2010, in the 4th floor training room of the Kansas Department of Agriculture, 109 S.W. 9th, Topeka, to consider the adoption of proposed regulations.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Secretary of Agriculture, 109 S.W. 9th, 4th Floor, Topeka, 66612, or by e-mail at [leslie.garner@kda.ks.gov](mailto:leslie.garner@kda.ks.gov). All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulations during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes. These regulations are proposed for adoption on a permanent basis. A summary of the proposed regulations and their economic impact follows:

**K.A.R. 4-13-25** adds a definition for “static pressure”; clarifies the definitions of “bulk pesticide” “discharge” “owner or operator” and “secondary containment”; and removes the definitions for “inspection port” “primary containment” and “reportable event”.

**K.A.R. 4-13-25b** adds criteria quantities for dry and liquid bulk pesticides stored, held, or maintained at a facility at any time.

**K.A.R. 4-13-25c** clarifies construction of a bulk pesticide storage facility to protect appurtenances and containers from damage and protection of dry bulk pesticide from precipitation.

**K.A.R. 4-13-25d** clarifies construction of secondary containment, procedures to empty sump or other specific point of recovery, and prohibition of penetrations through floor or walls.

**K.A.R. 4-13-25e** clarifies procedures to empty sump or other specific point of recovery in mixing and loading pads and adds a requirement restricting specific activities to mixing and loading pads.

**K.A.R. 4-13-25f** clarifies securing of valves and on-site operator attending transfers.

**K.A.R. 4-13-25g** removes the requirement to notify the secretary within 48 hours when any container, appurtenance, or secondary containment is taken out of service due to a discovered defect.

**K.A.R. 4-13-25h** clarifies the requirement for secondary containment plan submission.

**K.A.R. 4-13-25i** is revoked because the secondary containment step-wise implementation compliance dates have long passed.

**K.A.R. 4-13-25j** changes bulk pesticide storage and secondary containment inspection frequency from six months to monthly and clarifies response options to discovery of defects.

**K.A.R. 4-13-25k** changes “Kansas department of agriculture” to “secretary” for clarification and consistency.

**K.A.R. 4-13-25l** adds civil penalty enforcement option for pesticide business licensees and pesticide dealers who don’t comply with containment requirements.

**K.A.R. 4-13-25m** is a new regulation addressing the change in owner or operator of a bulk pesticide storage facility.

**Economic Impact Statement:**

The simplified procedure for changing the owner or operator of a bulk pesticide facility is expected to consume fewer resources and result in faster processing times.

The overall impact on the regulated community is anticipated to be a cost savings. Establishing a procedure for transfer of secondary containment facilities will save the costs and efforts associated with current requirement – which is for new owners of facilities to start the application process from the beginning.

The increased inspection frequency may increase operational costs if less frequent inspections are currently being performed, but the early identification of defects should reduce repair/maintenance costs.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and impact statements in an accessible format. Requests for

accommodation should be made at least five working days in advance of the hearing by contacting Leslie Garner at (785) 296-4623 or fax (785) 368-6668. Handicapped parking is located at the southwest corner of 9th and Kansas Ave., and the north entrance to the building is accessible to individuals with disabilities.

Copies of the regulations and their economic impact statements may be obtained by contacting the Department of Agriculture, Leslie Garner, 109 SW 9<sup>th</sup> St., 4<sup>th</sup> Floor, Topeka, KS 66612 or (785) 296-4623 or by accessing the department's Web site at <http://www.ksda.gov>. Comments may also be made through our website under the proposed regulation.

Joshua Svaty  
Acting Secretary of Agriculture

**KANSAS DEPARTMENT OF AGRICULTURE  
IMPACT STATEMENT**

**Proposed amended revoked and new regulations**

**K.A.R. 4-13-25; 4-13-25b; 4-13-25c; 4-13-25d; 4-13-25e; 4-13-25f; 4-13-25g; 4-13-25h; 4-13-25i; 4-13-25j; 4-13-25k; 4-13-25l; and 4-13-25m**

**I. Summary of Proposed Regulation, Including Its Purpose.**

K.A.R. 4-13-25 adds a definition for “static pressure”; clarifies the definitions of “bulk pesticide” “discharge” “owner or operator” and “secondary containment”; and removes the definitions for “inspection port” “primary containment” and “reportable event”.

K.A.R. 4-13-25b adds criteria quantities for dry and liquid bulk pesticides stored, held, or maintained at a facility at any time.

K.A.R. 4-13-25c clarifies construction of a bulk pesticide storage facility to protect appurtenances and containers from damage and protection of dry bulk pesticide from precipitation.

K.A.R. 4-13-25d clarifies construction of secondary containment, procedures to empty sump or other specific point of recovery, and prohibition of penetrations through floor or walls.

K.A.R. 4-13-25e clarifies procedures to empty sump or other specific point of recovery in mixing and loading pads and adds a requirement restricting specific activities to mixing and loading pads.

K.A.R. 4-13-25f clarifies securing of valves and on-site operator attending transfers.

K.A.R. 4-13-25g removes the requirement to notify the secretary within 48 hours when any container, appurtenance, or secondary containment is taken out of service due to a discovered defect.

K.A.R. 4-13-25h clarifies the requirement for secondary containment plan submission.

K.A.R. 4-13-25i is revoked because the secondary containment step-wise implementation compliance dates have long passed.

K.A.R. 4-13-25j changes bulk pesticide storage and secondary containment inspection frequency from six months to monthly and clarifies response options to discovery of defects.

K.A.R. 4-13-25k changes “Kansas department of agriculture” to “secretary” for clarification and consistency.

K.A.R. 4-13-25l adds civil penalty enforcement option for pesticide business licensees and pesticide dealers who don’t comply with containment requirements.

K.A.R. 4-13-25m is a new regulation addressing the change in owner or operator of a bulk pesticide storage facility.

**II. Reason Or Reasons The Proposed Regulation Is Required, Including Whether Or Not The Regulation Is Mandated By Federal Law.**

These proposed changes are required to address owner/operator changes of bulk pesticide storage facilities. In addition, clarifying construction materials and inspection frequencies should allow Kansas to maintain primacy for enforcement of pesticide secondary containment under state law rather than EPA's recent rules under the Federal Insecticide, Fungicide and Rodenticide Act.

This regulation is not mandated by federal law but federal law is a driver.

**III. Anticipated Economic Impact Upon The Kansas Department Of Agriculture.**

The simplified procedure for changing the owner or operator of a bulk pesticide facility is expected to consume fewer resources and result in faster processing times.

**IV. Anticipated Financial Impact Upon Other Governmental Agencies And Upon Private Business Or Individuals.**

The overall impact on the regulated community is anticipated to be a cost savings. Establishing a procedure for transfer of secondary containment facilities will save the costs and efforts associated with current requirement – which is for new owners of facilities to start the application process from the beginning.

The increased inspection frequency may increase operational costs if less frequent inspections are currently being performed, but the early identification of defects should reduce repair/maintenance costs.

**V. Less Costly or Intrusive Methods That Were Considered, But Rejected, And The Reason For Rejection.**

Allowing the EPA pesticide container and containment rules under FIFRA to be applied to Kansas, *i.e.*, not asking for a waiver, would have implemented more changes for the regulated community and the agency.

**VI. Environmental Impact**

The impact of these changes on the environment will be neutral to positive, depending on the facility owners'/operators' current inspection and repair procedures.

**K.A.R. 4-13-25. Bulk pesticide storage and handling of pesticides; definitions.** As used in K.A.R. 4-13-25 through ~~4-13-25k~~ 4-13-25m, the following terms shall be defined as follows:

(a) "Appurtenance" means any valve, pump, fitting, pipe, hose, auger, metering device, and dispensing device connected to a storage container. "Dispensing device" shall include any device that is used to transfer bulk pesticides into or out of a container.

(b) "Bulk pesticide" means any pesticide, whether liquid or solid, that is kept at ~~a standard~~ ambient temperature and pressure and is stored in an individual container of undivided capacity in quantities identified in K.A.R. 4-13-25b.

(c) "Bulk pesticide container" means any receptacle or device in which a pesticide is stored, mixed, treated, disposed of, or handled in any manner in quantities identified in K.A.R. 4-13-25b.

(d) "Bulk pesticide storage facility" and "facility" mean any warehouse, loading pad, or other area where a bulk pesticide is stored, mixed, loaded, or unloaded, unless otherwise exempted. Each bulk pesticide storage facility located within 300 feet of another facility owned or operated by the same person shall be considered the same facility for the purpose of finding the number of consecutive days in storage and determining whether the facility is exempt from the requirements of K.A.R. 4-13-25 through K.A.R. ~~4-13-25l~~ 4-13-25m.

(e) "Chemically compatible" means that the material will not react chemically adversely or electrolytically adversely to the bulk pesticide being stored, loaded, unloaded, mixed, or handled.

(f) "Discharge" means any spilling, leaking, depositing, pumping, dumping, or emptying, whether accidental or intentional, resulting in the release of a pesticide or material containing a pesticide at a bulk pesticide storage facility. "Discharge" shall not include the lawful transferring, loading, unloading, repackaging, refilling, distributing, using, disposing, or application of a pesticide. This term shall also exclude the normal washing and rinsing activities on a mixing and loading pad.

(g) "Dry bulk pesticide" means any bulk pesticide that is in solid form before any end-use application or before any mixing for end-use application. This term shall include making formulations including dusts, powders, and granules.

(h) "End-use application" means the application of a pesticide by the owner or lessee of the real property upon which the application is made to control a pest covered by the pesticide label.

(i) "Flood plain" means an area at one percent or greater risk of flood occurrence in any given year.

(j) "Gallon" means the United States standard measure of a gallon.

(k) ~~"Inspection port" means a secured opening that allows access into the interior of a bulk pesticide storage container for the purpose of inspection.~~

⌘ "Liquid bulk pesticide" means any bulk pesticide in liquid form before dilution for end-use application. This term shall include solutions, emulsions, suspensions, slurries, and gels.

~~(m)~~ (l) "Mixing and loading pad" and "pad" mean a surface designed to provide

containment of a pesticide during the loading, unloading, mixing, or handling of a pesticide, or during the cleaning, rinsing, or refilling of a pesticide container.

~~(n)~~ (m) "Mobile container" means a bulk pesticide container that is designed and used for transporting bulk pesticides.

~~(n)~~ (n) "Owner or operator" shall include any agent or employee of an owner or operator and mean any of the following:

(1) A ~~dealer of pesticides~~ pesticide dealer as defined by K.S.A. ~~2-2469~~ 2-2438a(q) and amendments thereto;

(2) a pesticide business licensee as defined by K.S.A. 2-2438a(p) and amendments thereto;

(3) a government agency registrant as addressed in K.S.A. 2-2440(e) and amendments thereto;

(4) a certified private applicator, as defined by K.S.A. 2-2438a(c)(2) and amendments thereto, of a bulk pesticide storage facility; or

(5) any other ~~individual~~ person, as defined by K.S.A. 2-2438a(l) and amendments thereto, responsible for the ~~bulk~~ storage of bulk pesticides as defined by subsection (b).

~~(p)~~ (o) "Permanent cessation of operations" means either of the following:

(1) No pesticides have been loaded, unloaded, or stored at the facility for 12 consecutive months.

(2) The facility has gone out of business and is no longer a going concern.

~~(q) “Primary containment” means the bulk pesticide container. However, synthetic container liners incapable of containing bulk pesticides independent of the support of another container shall not be considered primary containment.~~

~~(†)~~ (p) “Reasonably foreseeable” means what the secretary determines would have been foreseeable at the time the decision affecting the facility or its condition was made. “Reasonable foreseeability” shall include consideration of the owner’s or operator’s knowledge of conditions at the time the condition was created or the decision was made.

~~(s) “Reportable event” means any release of pesticide from a facility not contained by secondary containment that is required to be reported to the secretary of agriculture.~~

~~(†)~~ (q) “Secondary containment” means any structure, tank, or container, including rigid diking, that is designed, constructed, and maintained to intercept, hold, contain, or confine a discharge of pesticide from ~~primary containment~~ a bulk pesticide container and to contain spills, prevent runoff, and avoid leaching.

(r) “Static pressure” means the pressure exerted by a fluid that is not flowing or moving.

~~(†)~~ (s) “Sump” means a recessed reservoir or catch basin designed to be a receptacle for the collection of liquids in the floor of secondary containment or in the part of the secondary containment that constitutes the loading pad. (Authorized by and implementing K.S.A. 2-2467a ~~and 2-2471~~; effective May 1, 1985; amended Dec. 27, 2002; amended P-

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**4-13-25b. Quantities of bulk pesticide.** (a) A bulk pesticide shall be subject to ~~the requirements~~ of K.A.R. 4-13-25 through K.A.R. ~~4-13-25l~~ 4-13-25k if it is stored, loaded, or unloaded in a container designed for either of the following:

(1) Quantities greater than 55 gallons liquid measure; or

(2) quantities greater than 100 pounds net dry weight.

(b) A facility shall be subject to the requirements of K.A.R. 4-13-25 through K.A.R. ~~4-13-25l~~ 4-13-25k if ~~either~~ any of the following conditions is met:

(1) A cumulative total of 1,000 gallons or more of liquid bulk pesticide is transferred away from the facility during any consecutive 365-day period.

(2) A total of 1,000 gallons or more of liquid bulk pesticide is stored, held, or maintained at the facility at any time.

(3) A A cumulative total of 3,000 pounds or more of dry bulk pesticide is transferred away from the facility during any consecutive 365-day period.

(4) A total of 3,000 pounds or more of dry bulk pesticide is stored, held, or maintained at the facility at any time. (Authorized by and implementing K.S.A. 2-2467a ~~and 2-2471~~; effective Dec. 27, 2002; amended P-\_\_\_\_\_.)

**K.A.R. 4-13-25c. Location, design, and construction requirements of a bulk pesticide**

**storage facility.** Each owner or operator shall meet the following requirements: (a)(1) Each bulk pesticide storage facility shall be designed, constructed, and maintained according to the pesticide manufacturers' directions, instructions, or recommendations. The facility shall be constructed of materials that contain spills, prevent runoff, and avoid leaching of the pesticide being mixed, loaded, or unloaded. Construction materials shall be chemically compatible with the pesticides that come in contact with the material.

(2) ~~The~~ Each bulk pesticide storage facility shall be designed, constructed, and maintained to accommodate all reasonably foreseeable loading and unloading conditions, including the anticipated wheel load of a vehicle ~~or collision of a vehicle with a container or an appurtenance,~~ and to protect appurtenances and bulk pesticide containers against damage from operating personnel and moving equipment through the use of flexible connections, guard rails, barriers, and protective cages, where necessary.

(3) Asphalt shall not be used as a material in the construction of a bulk pesticide storage facility. ~~Reasonable alternatives in materials and design that adequately serve the intended purpose shall be considered.~~

(b) No bulk pesticide storage facility shall be constructed or maintained in a flood plain unless the bulk pesticide is stored above the base flood elevation.

(c) The floor of each bulk pesticide storage facility shall be constructed of material that prevents the movement of pesticide materials and moisture through the floor and shall be designed, constructed, and maintained in a manner that allows discharges to be collected,

contained, and recovered.

(d) All electrical equipment and wiring shall be elevated to prevent the equipment and wiring from becoming submerged and shall be grounded to dissipate static electricity.

(e) Both private and public water supplies shall be protected from contamination from the bulk pesticide storage facility.

(f) Each bulk pesticide storage facility shall contain a mixing and loading pad.

(g) Each bulk pesticide storage facility shall be secured to protect against reasonably foreseeable unauthorized access that could result in a discharge of pesticides.

(h) Each bulk pesticide storage facility shall be designed, constructed, and maintained to prevent contact of any dry bulk pesticide with precipitation. Contact with precipitation shall be prevented by ~~use of~~ the following:

(1) Using a permanent cover; and

(2) placing dry bulk pesticide on pallets or a raised concrete platform enclosed by a curb that is at least six inches high and extends at least two feet beyond the perimeter of the dry bulk pesticide storage area.

(i) Each bulk pesticide storage facility shall be designed, constructed, and maintained to avoid the creation of pesticide waste and to prevent cross-contamination of pesticides.

(j) Bulk pesticides shall not be stored or mixed in underground containers. (Authorized by and implementing K.S.A. 2-2467a ~~and 2-2471~~; effective Dec. 27, 2002; amended P-

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**K.A.R. 4-13-25d. Secondary containment for bulk pesticide storage.** Each owner or operator shall meet the following requirements: (a) All bulk pesticide shall be stored within secondary containment. The secondary containment capacity shall ~~contain a minimum of~~ be at least 110 percent of the capacity of the largest single bulk pesticide container in addition to the displacement of tanks, appurtenances, fixtures, equipment, and material located within the secondary containment.

(b) The secondary containment, including the floor or bottom of the secondary containment, shall meet the following requirements:

(1) Be constructed of ~~sufficient thickness, density, and composition to contain any discharged material~~ steel, reinforced concrete, or any other rigid material capable of withstanding the static pressure resulting from the secondary containment being completely filled with a liquid having a density greater than or equal to the density of the most dense liquid bulk pesticide to be stored within the containment; and

(2) ~~shall~~ be leakproof with cracks, seams, and joints sealed.

(c) The floor or bottom of the secondary containment shall drain to a sump or other specific point of recovery.

(d) The sump or other specific point of recovery shall be ~~drained~~ emptied daily by an on-site operator, who shall continuously monitor this process. The on-site operator may use an automatically activated pump to empty the sump if an automatic overflow switch is installed for the receiving container. The owner or operator may use the recovered pesticide for its intended purpose if it can be used according to the recovered pesticide's label. The owner or operator shall dispose of, in accordance with the label, any recovered pesticide that cannot be

used.

(e) ~~Any outlet or drain within the secondary containment shall be permanently plugged and sealed. The secondary containment exterior shall not have a relief outlet or valve. Sanitary and storm sewer drains~~ No outlet, drain, or other means of penetration shall ~~not~~ be located ~~within~~ through the floor or bottom or walls of the secondary containment.

(f) Secondary containment shall be constructed to allow the interior and exterior of the walls to be viewed.

(g) A soil liner shall not be considered adequate for the secondary containment of pesticides. Masonry block, asphalt, earthen materials, unfired or fired clay, natural soil-clay mixtures, clay-bentonite mixtures, and prefabricated bentonite liners shall not be used as secondary containment. However, sealant-coated concrete blocks may be used if the facility owner's or operator's use of the blocks is approved in writing by the manufacturer of the pesticide.

(h) A synthetic liner used to line the secondary containment shall be installed and maintained according to the liner manufacturer's specifications, directions, and recommendations. The specifications, directions, and recommendations about liners from the manufacturers of the pesticides stored in the facility shall also be followed. All seams shall be tested, maintained, and repaired according to the manufacturer's specifications, directions, and recommendations. The liner shall be replaced if it cannot be repaired to meet the liner manufacturer's requirements ~~of K.A.R. 4-13-25 through K.A.R. 4-13-251~~. In no event shall a

liner that is incapable of containing bulk pesticides independent of the support of another container be used in lieu of secondary containment. (Authorized by and implementing K.S.A. 2-2467a and ~~2-2471~~; effective Dec. 27, 2002; amended P-\_\_\_\_\_.)

**K.A.R. 4-13-25e. Requirements for mixing and loading pads for bulk pesticides.** Each

owner or operator shall meet the following requirements: (a) Each mixing and loading pad not connected to a storage area shall be of adequate size and design to contain at least 110 percent of the capacity of the container or tank on the pad and the displacement of tanks, equipment, appurtenances, fixtures, and material located on the pad.

(b) Each mixing and loading pad shall be constructed to contain any discharge and shall be leakproof with all cracks, seams, and joints sealed. The pad shall be impervious to spills and capable of supporting the weight of the heaviest vehicle plus all loading, unloading, and mixing operations. ~~The mixing and loading pad shall drain liquids to a sump or other discrete point of recovery. The mixing and loading pad shall not have any recovery points other than to a sump or other discrete recovery point.~~ The floor of the mixing and loading pad shall slope to a single point or to a sump, for the recovery of liquid spills.

(c) The sump shall be ~~drained~~ emptied daily by an on-site operator, who shall continuously monitor this process. The on-site operator may use an automatically activated pump to empty the sump if an automatic overflow switch is installed for the receiving container. The owner or operator may use the recovered pesticide for its intended purpose if it can be used according to the recovered pesticide's label. The owner or operator shall dispose of, in accordance with the label, any recovered pesticide that cannot be used.

(d) The following activities shall be performed on the mixing and loading pad or within secondary containment:

(1) Filling pesticide containers;

(2) washing application equipment;

(3) rinsing pesticide containers or application equipment;

(4) mixing operations; and

(5) loading application equipment. (Authorized by and implementing K.S.A. 2-2467a ~~and~~  
~~2-2474~~; effective Dec. 27, 2002; amended P-\_\_\_\_\_.)



**K.A.R. 4-13-25f. Requirements for ~~storage~~ bulk pesticide containers and appurtenances**

~~for bulk pesticides~~. Each owner or operator shall meet the following requirements: (a) Each bulk pesticide container shall be designed to handle all operating stresses, including static pressure, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage container ~~may~~ could be subject during operations. Each bulk pesticide container shall be chemically compatible with the pesticide it holds and shall meet all specifications, directions, and recommendations of the manufacturers of the pesticide and bulk pesticide container.

(b) ~~Every~~ Each bulk pesticide container connection, except for safety relief connections, shall be equipped with a shutoff valve accessible and located within the secondary containment. ~~Shut-off~~

(c) Except while the stored pesticide is being removed from the container, shutoff valves shall be left either closed and locked or otherwise secured except while the stored pesticide is being removed from the container from access. The transfer of pesticide from one bulk pesticide container to another and between a bulk pesticide container and a transport vehicle shall be attended at all times by an on-site operator.

~~(e)~~(d) Bulk pesticide containers and appurtenances shall be ~~adequately~~ supported to prevent sagging.

~~(d)~~(e) Sight gauges shall not be ~~permitted~~ used on ~~storage~~ bulk pesticide containers.

~~(e)~~(f) Each bulk pesticide container that is not located within a structure with a roof and walls shall be designed, installed, and maintained to prevent flotation and to withstand winds of 90 miles per hour or less.

~~(f)~~(g) Each bulk pesticide container shall be designed to protect against excessive internal pressure or vacuum.

~~(g)~~(h) Each bulk pesticide container used for storage shall be marked clearly to identify the pesticide stored in the container. (Authorized by and implementing K.S.A. 2-2467a ~~and 2-2474~~; effective Dec. 27, 2002; amended P-\_\_\_\_\_.)

**K.A.R. 4-13-25g. Discharge, recovery, and reporting requirements.** (a) Each owner or operator shall recover promptly any discharge ~~of a pesticide~~. The owner or operator may use the recovered pesticide for its intended purpose if it can be used according to the recovered pesticide's label or labeling. The owner or operator shall dispose of, in accordance with the label, any recovered pesticide that cannot be used.

(b) The owner or operator shall notify the secretary within 48 hours of any ~~reportable event~~ discharge not contained by secondary containment. (Authorized by and implementing K.S.A. 2-2467a ~~and 2-2471~~; effective Dec. 27, 2002; amended P-  
\_\_\_\_\_.)

**4-13-25h. Submission of structural diagrams, plans, and specifications.** (a) ~~Within one year following the effective date of this regulation,~~ The owner or operator of each ~~existing or proposed~~ bulk pesticide storage facility shall ~~submit to the secretary a diagram~~ maintain diagrams, plans, and specifications of the facility on site and with the secretary. ~~The plans and specifications shall include the existing or proposed facility layout, mechanical and electrical diagrams, construction materials, and the type of equipment that is located in the facility or that is to be fixed or installed in the facility. The diagram shall be drawn to scale and shall be legible without magnification.~~ The copy maintained at the facility shall be made available to a representative of the secretary upon request.

(b)(1) Each owner or operator of a bulk pesticide storage facility that is to be remodeled, an existing structure that is to be converted to use as a bulk pesticide storage facility, or a proposed bulk pesticide storage facility shall submit diagrams, plans, and specifications to the secretary before commencement of remodeling, conversion, or construction. Remodeling, conversion, or construction shall not commence until the owner or operator receives written notice from the secretary that no further information is required.

(2) The owner or operator of each facility under this subsection shall complete remodeling, conversion, or construction within two years after the secretary's written notice that no additional information is required. Upon completion of the remodel, conversion, or construction, the owner or operator of a facility under this subsection shall certify on a form prescribed by the secretary that the facility meets or exceeds all the requirements of K.A.R. 4-13-

25 through K.A.R. 4-13-25k and is constructed in accordance with the diagrams, plans, and specifications submitted to the secretary.

(c) The diagrams, plans, and specifications shall include the facility layout, mechanical and electrical diagrams, construction materials, and the type of equipment that is located in the facility or that is to be fixed or installed in the facility. The diagrams shall be drawn to scale and shall be legible without magnification. The diagrams, plans, and specifications shall contain all information required in subsection (d).

(d) The ~~diagram~~ diagrams, plans, and specifications of the bulk pesticide storage facility shall be submitted in a with the form prescribed by the secretary and. The required documentation shall include, at a minimum, ~~shall contain~~ the following information:

- (1) The location of the facility relative to the flood plain;
- (2) the location of the facility relative to any surface water within 1,320 feet of the facility and the distance between the facility and the surface water;
- (3) the distance from both the facility and the area within 100 feet of the facility to groundwater, and the location of the groundwater relative to the facility;
- (4) the location of any plumbing and access to private and public water supplies and the distance from the plumbing and access to the private and public water supplies;
- (5) the drainage pattern of the facility;
- (6) certification that the facility is not located on any abandoned or active oil, gas, or water well;

- (7) certification that the facility is not located on a utility easement;
- (8) the size and location of the proposed walls and flooring to be located within the facility;
- (9) the location and size of each bulk pesticide storage container;
- (10) the location and size of each loading and mixing pad;
- (11) the location of each appurtenance used in the storage or transfer of bulk pesticide within the facility;
- (12) the location of electrical equipment, wiring, and static grounding wires;
- (13) the location and size of dry bulk pesticide storage; and
- (14) any other relevant information required by the secretary.

~~(c) Whenever an existing storage facility is remodeled significantly or an existing structure is converted to use as a bulk pesticide storage facility, the diagrams, plans, and specifications for the remodeling or conversion of a building to a facility shall be submitted by the owner or operator of the facility to the secretary for review before the remodeling or conversion begins. The diagrams, plans, and specifications shall contain all the information required in subsection (b) of this regulation.~~

~~(d) In no event shall construction, remodeling, or conversion of an existing or proposed facility commence unless the applicant receives notice that the secretary requires no additional information.~~

(e) Each owner or operator of a bulk pesticide storage facility shall submit the diagrams, plans, and specifications required in this regulation to the secretary at least 30 days before the date the owner or operator proposes that the construction will commence.

(f) Additional time to comply with any deadline in this regulation may be granted by the secretary upon receipt of a written request and upon a showing of good cause for the additional time requested. Each request shall state the reason for the additional time requested and the amount of additional time needed.

(g) The construction, remodeling, conversion, and maintenance of a facility shall conform with the diagrams, plans identified in the notice, and specifications submitted and required by K.A.R. 4-13-25a through K.A.R. 4-13-25k. (Authorized by and implementing K.S.A. 2-2467a and 2-2471; effective Dec. 27, 2002; amended P-\_\_\_\_\_.)

**K.A.R. 4-13-25i.** (Authorized by and implementing K.S.A. 2-2467a and 2-2471; effective Dec. 27, 2002; revoked P-\_\_\_\_\_.)



**K.A.R. 4-13-25j. Bulk pesticide storage facility inspection and maintenance requirements.**

(a) Each owner or operator shall inspect the bulk pesticide storage facility and secondary containment, including all appurtenances, at least ~~once in every six-month period following the effective date of this regulation. The inspection shall include detection of the following defects~~ monthly for any defects, including the following:

- (1) Corrosion;
- (2) leaks;
- (3) cracks;
- (4) spills;
- (5) gaps;
- (6) tears;
- (7) unsealed joints;
- (8) cross-contamination of pesticides;
- (9) structural defects;
- (10) equipment defects; and
- (11) any other defect in the facility or potential violation of K.A.R. 4-13-25 through

K.A.R. ~~4-13-25i~~ 4-13-25k.

The owner or operator shall promptly correct any defect.

(b) Upon the discovery of each defect specified in subsection (a) that compromises the facility's ability to contain the pesticide, the owner or operator shall, within 24 hours after the discovery, either initiate repairs to correct the defect or take the appurtenance or secondary

containment out of service. If the appurtenance or secondary containment is left in service, the defect shall be corrected within 14 days following the discovery. If the defect is not corrected within 14 days following the discovery, the appurtenance or secondary containment shall be removed from service.

(c) On the day any defect is first discovered, The owner or operator shall make a record of the following:

(1) ~~Any inspection or repair of the discovered defect at the facility~~ Each inspection performed pursuant to subsection (a);

(2) ~~any release of a pesticide~~ each discharge within the facility in excess of 55 gallons ~~or a combination of releases; and~~

(3) more than one discharge within the facility in a 24-hour period totaling or exceeding 55 gallons;

~~(3) any reportable event; and~~

~~(4) the name of the person making the record and the date the record was made.~~

~~(c) Each owner or operator shall retain all inspection and maintenance records at the facility and shall make the records available to the secretary on request. The owner or operator shall record each inspection according to subsection (a) above on a form prescribed by the secretary.~~

(d) Each record made pursuant to subsection (c) shall include the following:

(1) The name of the person making the record;

(2) the date the record was made;

(3) if any inspection is performed, the following:

(A) The date of the inspection;

(B) a description of any defect found; and

(C) a description of any repairs made to remedy the defect;

(4) if a discharge occurred, the following:

(A) The date of the discharge;

(B) the amount of the discharge;

(C) the cause of the discharge;

(D) a description of any repairs made; and

(E) the date and time the secretary was notified pursuant to K.A.R. 5-13-25g;

(5) the date any defective equipment at the facility is taken out of service; and

(6) the date any defective equipment is placed back into service.

(e) All records maintained at the facility shall be retained for three years from the date of the record and shall be made available to the secretary or an authorized representative of the secretary upon request. (Authorized by and implementing K.S.A. 2-2467a and ~~2-2471~~; effective Dec. 27, 2002; amended P-\_\_\_\_\_.)

**K.A.R. 4-13-25k. Site closure and discontinuation of operation.** (a) The owner or operator shall notify the ~~Kansas department of agriculture~~ secretary within 30 calendar days following the permanent cessation of operations of a bulk pesticide storage facility.

(b) Whenever a bulk pesticide storage facility permanently ceases operations, the owner or operator shall provide the secretary with written verification of both of the following, on a form prescribed by the secretary:

(1) All pesticides, solutions containing a pesticide, wash waters, and other materials that may contain pesticides have been removed from the facility and have been used or disposed of according to the pesticide's label or labeling; and according to all federal, state, and local requirements.

(2) All bulk pesticide containers, appurtenances, mixing and loading pads, and sumps have been thoroughly cleaned according to each pesticide manufacturer's requirements, instructions, directions, or recommendations or, if none exist, according to standard industry practice. (Authorized by and implementing K.S.A. 2-2467a ~~and 2-2471~~; effective Dec. 27, 2002; amended P-\_\_\_\_\_.)

**K.A.R. 4-13-25l. Penalty for noncompliance with pesticide containment.** (a) The license, certification, or registration of any pesticide business licensee, governmental agency registrant, pesticide dealer, or certified private applicator who is found to have violated a pesticide containment requirement in K.A.R. 4-13-25a through 4-13-25k shall be subject to suspension, revocation, nonrenewal, or cancellation. ~~The procedure required for~~

(b) Any pesticide business licensee or pesticide dealer who is found to have violated a pesticide containment requirement in K.A.R. 4-13-25 through 4-13-25k may incur a civil penalty in accordance with K.A.R. 4-13-62.

(c) Enforcement of K.A.R. 4-13-25 through K.A.R. 4-13-25k shall ~~comply~~ be conducted in accordance with the ~~requirements~~ provisions of the Kansas administrative procedures act, K.S.A. 77-501 et seq.; and amendments thereto. (Authorized by ~~and implementing~~ K.S.A. 2009 Supp. 2-2449; and K.S.A. 2-2467a, ~~and 2-2471~~; implementing K.S.A. 2-2440e, K.S.A. 2009 Supp. 2-2449, K.S.A. 2-2453, 2-2454, and 2-2467a; effective Dec. 27, 2002; amended P-  
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**K.A.R. 4-13-25m. Change in owner or operator of bulk pesticide storage facility; reporting requirements.** (a) If the owner or operator of a bulk pesticide storage facility changes, the new owner or operator shall notify the secretary of the change within 30 days after the effective date of the change, on a form prescribed by the secretary.

(b) The new owner or operator shall meet one of the following requirements:

(1) Submit to the secretary the diagram, plans, and specifications of the bulk pesticide storage facility required by K.A.R. 4-13-25h; or

(2)(A) State on the notification form that the owner or operator has reviewed the existing diagrams, plans, and specifications maintained by the secretary;

(B) certify that the bulk pesticide storage facility remains consistent with those existing diagrams, plans, and specifications; and

(C) certify that the bulk pesticide storage facility has been constructed, remodeled, or converted and is maintained and operated in accordance with K.A.R. 4-13-25 through K.A.R. 4-13-25k. (Authorized by and implementing K.S.A. 2-2467a; effective P-

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